IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Deceased Ranglal through his LRs. and others.

vs.

Laxmilal and others.

S.B.CIVIL SECOND APPEAL NO.70/1988 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 7.3.1988 PASSED BY SHRI SUWALAL SEERWA, ADDITIONAL DISTRICT JUDGE, BHILWARA IN CIVIL REGULAR APPEALS NO.9/1978 AND 15/1985.

DATE OF JUDGMENT ::: 18.1.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. Suresh Srimali a/w Mr.R Choudhary, for appellants.

Mr. Arvind Samdaria, for the respondents.

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BY THE COURT:

Heard learned counsel for the parties.

The appellants/defendants are aggrieved against

the judgment and decree dated 7.3.1988 passed by learned Additional District Judge, Bhilwara in Civil Regular First Appeals No.9/1978 and 15/1985 by which the first appellate court dismissed appeal no.9/1978 preferred by the appellants/defendants and upheld the judgment and decree of the trial court dated 7.4.1978 and allowed the appeal no.15/1985 preferred by the plaintiff against the order of trial court dated 20.7.1985 passed on issue no.20A framed by the first appellate court.

The present litigation has a checkered history as the plaintiff including 7 other persons, who are also parties in the present suit, instituted civil original suit no.11/54 against Gordhan Lal and others. Said suit was decreed by the trial court vide judgment and decree dated 30.3.1957 and regular first appeal against the said judgment and decree was dismissed by the first appellate court. The defendants preferred second appeal before this Court which was registered as S.B.Civil Second Appeal No.8/1958 (Dhananjai vs. Ram Kumar reported in RLW 1962 page 18). Said appeal too was dismissed on 14.9.1962. In the said litigation, the plaintiffs sought relief of declaration that they are hereditary pujaris of Charbhuja Ji Temple of Bhilwara. The plaintiffs also sought relief of possession and for past, pendente lite and future mesne profits.

In Dhananjai's case (supra), this Court held as under :-

> “3. From the evidence on record it is established that the temple in suit was founded by one Sadaram Deopura who belonged to the Maheshwari Community. He was not residing in Bhilwara where the temple was situated, but was a resident of Udaipur. From a grant made in Smt. 1814 by the erstwhile State of Mewar it appears that Lalji and Kesarji were the Pujaris of the temple in that year and land was granted to them by the State in this capacity. The plaintiffs are descendants of Lalji and Kesarji. They are the hereditary Pujaris of this temple. They do Seva Puja in turn of 15 days each by rotation. In Smt. 2005 Birdi Chand, one of the descendants of Lalji and Kesarji, died leaving a widow Smt. Gauri who executed a sale-deed in respect of her husband's Osra to one Nathulal. This sale-deed was challenged by Gokaldass father of Prabhulal plaintiff No. 3 by means of a suit which was instituted in Smt. 2005. During the pendency of the suit Birdi Chand's Osra was handed over to defendants Nos. 1 to 4 by the remaining hereditary Pujaris. This arrangement worked satisfactorily till Smt. 2009. On 26-3-52 when Kalyanmal plaintiff's Osra was to begin defendants Nos. 1 to 4 did not hand over the charge of the temple to him. They handed over the charge of the temple to Dhananji defendant no. 5. The defendants thus dispossessed the plaintiffs from the office of hereditary Pujaris. The present suit was then instituted on 17-1-54 against these 5 defendants. It appears from the evidence on record that members of the Maheshwari Community have been

> managing the temple as de facto managers. They were not satisfied with the Seva Puja carried on by the plaintiffs and in an attempt to displace them they instigated defendants 1 to 4 to hand over the possession over the temple as Pujari to defendant No. 5." (Emphasis supplied)

It was submitted by the defendants of suit no.11/1954 before this Court in second appeal that the suit of the plaintiffs was liable to be dismissed as the members of Maheshwari Community, who were acting as defacto Managers, were not impleaded as party and it was further submitted that in the suit of the nature, the decree for mesne profits cannot be granted. This Court held that the suit was properly framed and cannot be dismissed for want of any necessary party. For mesne profits, this Court held that it can be awarded. With the decision on these two questions, this Court affirmed the judgments passed by the two courts below recognizing the right of the plaintiffs of there being Pujaris in the temple and that too hereditary Pujaris.

It will be worthwhile to mention here that in the earlier suit also, there was plea of the plaintiffs that the temple in question is Hindu Temple managed by 36 castes of Hindu Communities whereas the defendants' plea was that the temple is being managed by the Maheshwari Community.

The present suit has been filed by plaintiff Laxmi Lal and he impleaded defendants no.1 to 7 of the Maheshwari Community and 7 pujaris of the said temple as defendants no.8 to 14 who were hereditary Pujaris. In the present suit, the plaintiff claimed that the plaintiff and defendants no.8 to 14 have been wrongly ousted from the temple by preventing them from performing sewa puja. The plaintiff's present case is that he and defendants no.8 to 14 are descendants of Lalji and Kesarji [reference of whom is in the judgment of this Court given in the earlier round of litigation (supra)]. The plaintiff prayed that they may be declared hereditary pujaris of the temple and they are entitled to mesne profits at the rate of Rs.50/- per month which is their share from offerings by the pilgrims to the Idol.

The trial court framed 21 issues and evidence was led by both the parties. The trial court decreed the suit of the plaintiff vide judgment and decree dated 7.4.1978, against which an appeal was preferred. The appellate court framed one more issue i.e. issue no.20A and remitted the matter to the trial court for deciding the newly framed issue no.20A.

The trial court vide its order dated 20.7.1985 decided issue no.20A and held that the plaintiff shall be entitled to get the relief to the extent of his share of sewa puja and is not entitled to get the

relief of sewa puja alone for the share of other co-sharers.

The finding of the trial court on issue no.20A dated 20.7.1985 has been challenged by filing separate appeal instead of submitting objection against the finding in the appeal and, therefore, the appeal preferred by the plaintiff to challenge the finding of the trial court on issue no.20A dated 20.7.1985 was registered as Appeal No.15/1985.

Both these two appeals were decided by the first appellate court by common judgment and decree dated 7.3.1988. The appellate court reversed the finding of the trial court recorded on issue no.20A and held that there is no dispute between the plaintiff and the defendants no.8 to 14 and, therefore, it was not necessary to decide any claim of the defendants no.8 to 14 qua the plaintiff. The plaintiff and defendants no.8 to 14 all jointly are entitled to perform sewa puja.

Aggrieved against the judgment and decree of two courts below referred above, this second appeal has been preferred by the defendants.

The appeal was admitted on 14.12.1988 and following substantial questions of law were framed :-

(1)Whether the courts below relied upon Ex.7 and 8 which are irrelevant and inadmissible in

evidence by misreading them and the decision of issue no.2 is based on no evidence at all ?

(2)Whether the pedigree of the respondents of more than two centuries old can be proved by mere hearsay evidence of the plaintiff alone ?

(3)Whether the judgment passed in suit no.11/54 dated March 30, 1957 delivered by this Court, reported in 1963 RLW 18 is binding upon the defendants who were not parties in that suit ?

(4)Whether the present suit is hit by S.73 of the Rajasthan Public Trust Act, 1959 ?

(5)Whether the suit for mere declaration is not maintainable under Section 34 of the Specific Relief Act, 1963 that the respondents no.1 to 8 are entitled to take possession of the disputed temple as well as the Idol installed therein ?

(6)Whether the suit for permanent injunction is not maintainable regarding the property which is admittedly not in possession of the respondents ?

Learned counsel for the appellant vehemently submitted that two courts below committed serious error of law in not deciding the issue no.1 and in not holding that the property belongs to the Maheshwari Community and being managed by the Maheshwari Community.

In the second appeal, the appellants have submitted an application under Order 41 Rule 27 CPC on 8.4.2006 and sought permission to produce certified copy of some statement recorded in the case which was decided on 14.6.1935 wherein according to the appellants, there are admissions that the temple belongs to the Maheshwari Community. Further, the appellants submitted certified copy of the statement of Laxmilal given in a case no.10/2003 (UIT vs. Charbhuja Bada Mandir) dated 5.1.2006 in support of the appellants' plea that the possession of the temple was handed over to Maheshwari Community and they are managing the temple. The appellants also placed on record one document dated 14.6.1936 to prove that the temple was of Maheshwari Community and further submitted document of samwat year 1889 for the same plea.

According to learned counsel for the appellants, in view of the earlier decision of this Court in Dhananjai's case (supra), it is clear that the Maheshwari Community is in possession of the temple and because of the decree passed by the courts below, the plaintiffs may exclude the defendants from performing sewa puja and from managing the trust property and further grievance of the appellants is that by this decree, the Maheshwari Community has been deprived from taking income of the temple despite the fact that a

trust has already been created and in case, the trust would be deprived of its temple's income, then the trust cannot function and virtually, the trust will go in the hands of Pujaris for all purposes.

It is also submitted that the issue no.2 has been decided by the courts below on the basis of Exhibits-7 and 8 which are irrelevant and inadmissible in evidence. It is also submitted that the plaintiff failed to prove the pedigree and, therefore, failed to prove himself as successor of Lalji and Kesarji. It is also submitted that the decision given by this Court in Dhananjai's case is not binding upon the defendants as they were not parties in that suit. It is also submitted that the plaintiff's suit is hit by Section 73 of the Rajasthan Public Trust Act and suit for mere declaration was not maintainable and the plaintiff and defendants no.8 to 14 were not entitled to relief of possession.

Learned counsel for the respondents/plaintiff vehemently submitted that the plaintiff's right has already been recognised by the judgment of this Court delivered in the case of Dhananjai (supra). The plaintiff's case is that they are Pujaris and they are not claiming anything more than their right as hereditary pujaris. The defendants/appellants are also bound by the decision of this Court delivered in

Dhananjai's case (supra) and the appellants wrongfully prevented the plaintiff and other defendants from performing sewa puja and, therefore, the courts below rightly held that they are hereditary pujaris for the temple in question.

I considered the submissions of learned counsel for the parties and perused the reasons given by the two courts below as well as the facts of the case.

It is true that the appellants were not party in the earlier suit which was finally decided by this Court by delivering judgment in Dhananjai's case (supra) but at the same time, it will be worthwhile to mention here that the plea in the said suit was that the temple is belonging to Maheshwari community and in the present suit, the appellants' plea is also the same. In Dhananjai's case (supra), there was a plea that the Maheshwari community has not been impleaded as party and that objection was rejected by this Court by upholding the findings of two courts below with respect to objection of the defendants who were members of Maheshwari community. In the present case also, the appellants/defendants took the plea that the temple belongs to Maheshwari community and a trust has been created and the Trust is necessary party but it will be worthwhile to mention here that the trust has not

chosen to become party in the suit despite the fact that its trustees were knowing about the suit. Be it as it may be, the fact is that the plaintiffs are not claiming the temple to be their own which is apparent from para no.1 of the plaint itself as the plaintiff clearly stated that the temple is of Hindu Caste and the case of the defendants is it is of Maheshwari community. By this pleading, it is clear that the plaintiff is claiming his right as of pujari and, therefore, that right qua the defendants of this case was decided by the two courts below and furthermore is that the plaintiff's and his ancestor's right of being hereditary pujari has already been upheld by this Court as back as in the year 1961 by judgment dated 14.9.1962 rendered in Dhananjai's case (supra). The trial court, therefore, rightly observed that the question whether the temple is of upper Hindu caste or of Maheshwari community is not relevant in view of the relief claimed by the plaintiffs of limited nature of their right as of pujari. So far as substantial question of law no.2 is concerned, it is clear from the judgment delivered in Dhananjai's case (supra) that in that case, this Court clearly held that the original pujaris were Lalji and Kesarji and the Maheshwari community was managing the temple as defacto managers and in Dhananjai's case (supra), the present plaintiff's contention that he is descendant of Lalji and Kesarji was recognised,

therefore, it cannot be said that there is only oral evidence that the plaintiff is descendant of Lalji and Kesarji but the said contention finds support from the earlier judgment of Dhananjai's case (supra). Therefore, the substantial questions of law no.1 to 3 are decided against the appellants because of the reason that according to the appellants themselves, as pleaded in their memo of appeal in para (ii) of the grounds, the said judgment has created estopple by judgment against the respondents i.e. plaintiff and defendants no.8 to 14 and by the same principle, the appellants who are not claiming their personal interest in the property cannot say that there is no evidentiary value of the judgment obtained by the parties in the year 1962.

Substantial question of law no.4 is whether the present suit was not maintainable by virtue of Section 73 of the Rajasthan Public Trust Act, 1959 ?

It is clear from Section 73 that the said bar is not against the suit for declaration of civil right as of hereditary pujari and it is a bar against the civil court's jurisdiction in deciding any question which is by or under the Act of 1959 is to be decided or dealt with by any officer or authority under the said Act or in respect of which the decision or order of such officer or authority has been made final and

conclusive. Therefore, the substantial question of law no.4 is decided against the appellants.

Substantial questions of law no.5 and 6 are with respect to frame of the suit and with respect to the right of the plaintiff of claiming possession. It appears that the relief of possession has been misconstrued by the appellants, therefore, they raised grievance. It is clear from the plaint allegation itself that the plaintiff has not claimed exclusive possession of the temple and he categorically admitted that the temple is belonging to upper Hindu caste thereby admitted that his right is not exclusive so far as possession is concerned. The plaintiff only claimed his right as of Hereditary pujari, therefore, in a case where a different right than the right dependent upon exclusive possession is claimed, the suit for injunction is maintainable for the relief of that user for the benefit arising out of that use and not hit by Section 34 of the Specific Relief Act and the plea that the suit for permanent injunction filed by the plaintiff was not maintainable cannot be applied in the present case. Therefore, the substantial questions of law no.5 and 6 are decided against the appellants.

The apprehension of the appellants more is about handing over the possession of the temple to the plaintiff is based on no factual foundation because of

the simple reason that the Maheshwari community is defacto manager of the temple has been held by this Court in Dhananjai's case (supra) and its effect cannot be taken away by declaring that the plaintiff is hereditary pujari of temple. Another apprehension of the appellants is that by the judgment and decree under challenge, the plaintiff has been given total right to take all income of the temple whereas factually, it is incorrect. The courts below clearly held that the plaintiff is entitled to perform sewa puja and take income of only 'Chadava' (offerings) to the Idol an the plaintiff has neither claimed nor has been givne relief of taking all income of the temple.

In view of the above discussion, this appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya